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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America

v.

ORDER OF DETENTION PENDING TRIALAlejandro Perez-LeonCase Number: CR-13-00828-01-PHX-GMS

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts are established:

- ☐ by clear and convincing evidence the defendant is a danger to the community and require the detention of the defendant pending trial in this case.
- ☒ by a preponderance of the evidence the defendant is a serious flight risk and require the detention of the defendant pending trial in this case.

PART I -- FINDINGS OF FACT

- ☐ (1) 18 U.S.C. § 3142(e)(2)(A): The defendant has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4).
 - ☐ an offense for which the maximum sentence is life imprisonment or death.
 - ☐ an offense for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. §§ 801 et seq., 951 et seq., or 46 U.S.C. §§ 70501 et seq.
 - ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1)(A)-(C), or comparable state or local offenses.
 - ☐ any felony that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under 18 U.S.C. § 2250.
- ☐ (2) 18 U.S.C. § 3142(e)(2)(B): The offense described in Finding No. (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ☐ (3) 18 U.S.C. § 3142(e)(2)(C): A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in Finding No. (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings

- ☐ (1) 18 U.S.C. § 3142(e)(3): There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. §§ 801 et seq., 951 et seq., or 46 U.S.C. §§ 70501 et seq.
 - ☐ under 18 U.S.C. § 924(c), 956(a), or 2332b.
 - ☐ under 18 U.S.C. §§ 1581-1594, for which a maximum term of imprisonment of 20 years or more is prescribed.
 - ☐ an offense involving a minor victim under section 18 U.S.C. §§ 1201, 1591, 2241-42, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252(a)(4), 2260, 2421, 2422, 2423, or 2425.
- ☐ (2) The defendant has not rebutted the presumption established by Finding No. (1) that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings

- ☒ (1) There is a serious risk that the defendant will flee; no condition or combination of conditions will reasonably assure the appearance of the defendant as required.
- ☐ (2) No condition or combination of conditions will reasonably assure the safety of others and the community.
- ☐ (3) There is a serious risk that the defendant will (obstruct or attempt to obstruct justice) (threaten, injure, or intimidate a prospective witness or juror).
- ☐ (4) _____

PART II -- WRITTEN STATEMENT OF REASONS FOR DETENTION

- ☐ (1) I find that the credible testimony and information¹ submitted at the hearing establishes by clear and convincing evidence as to danger that:

- ☒ (2) I find that a preponderance of the evidence as to risk of flight that:
 - ☐ The defendant has no significant contacts in the District of Arizona.
 - ☐ The defendant has no resources in the United States from which he/she might make a bond reasonably calculated to assure his/her future appearance.
 - ☐ The defendant has a prior criminal history.
 - ☒ There is a record of prior failure to appear in court as ordered.
 - ☐ The defendant attempted to evade law enforcement contact by fleeing from law enforcement.
 - ☐ The defendant is facing a minimum mandatory of _____ incarceration and a maximum of _____.
 - ☒ In addition:

The defendant was released by this Court of June 5, 2013. Bail was fixed at personal recognizance and other conditions to include but not limited to:

The defendant be placed in the third party custody of his mother, Maria Del Carmen Perez-Leon, and shall reside with her at the address listed in the Pretrial Services Report.

The defendant shall immediately advise the court, defense counsel, and U.S. Attorney in writing of a change in his address and/or telephone number.

The Government alleges on June 18, 2013, the defendant's mother, Maria Del Carmen Perez-Leon, contacted Pretrial Services to alert them that the defendant had left the residence the night of June 17, 2013, to stay in a hotel. She also alleged that the defendant was aggressive towards her and that he told her that he planned to flee to Mexico.

The defendant's mother further stated that she no longer wished to continue to act in the capacity of a third-party custodian for the defendant.

¹The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at this hearing. See 18 U.S.C. § 3142(f). Factors to be taken into account are set forth in 18 U.S.C. § 3142(g).

On August 6, 2013, a status conference was conducted before Judge Snow. The defense counsel advised the Court that he had not had recent contact with the defendant. The August 6, 2013 trial was vacated. On October 21, 2013 the defendant was arrested.

The Petition claims Defendant violated pretrial release conditions. Title 18 U.S.C. § 3148 governs pretrial revocation and detention based on a violation of pretrial release conditions. Pursuant to 18 U.S.C. § 3148, "[a] person who has been released under section 3142 . . . and who has violated a condition of his release, is subject to revocation of release[.]"

During the revocation hearing, the defendant was sworn and he admitted under oath that he did violate the terms of his pretrial release. The Government also presented proffered evidence that the defendant did flee to Mexico. His mother traveled to Mexico to bring him back to the United States for treatment for his heart condition.

Based on the testimony, evidence, and arguments presented, the Court finds as follows:

The defendant is unlikely to abide by any condition or combination of conditions of release. This Court finds the defendant poses a risk of nonappearance based on his failure to follow previously imposed release conditions, his prior residence and ties to Mexico.

IT IS ORDERED that the Government's Petition to Revoke defendant's pretrial release pending trial is **GRANTED**. The defendant Alejandro Perez-Leon shall be **DETAINED** until further order of the assigned District Judge, the Honorable G. Murray Snow.

☐ The defendant does not dispute the information contained in the Pretrial Services Report, except:

The Court incorporates by reference the findings of the Pretrial Services Agency which were reviewed by the Court at the time of the hearing in this matter.

PART III -- DIRECTIONS REGARDING DETENTION

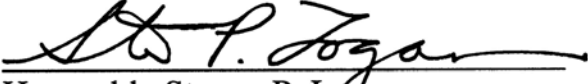
The defendant is committed to the custody of the Attorney General or his/her designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

PART IV -- APPEALS AND THIRD PARTY RELEASE

IT IS ORDERED that should an appeal of this detention order be filed with the District Court, it is counsel's responsibility to deliver a copy of the motion for review/reconsideration to Pretrial Services at least one day prior to the hearing set before the District Court. Pursuant to Rule 59(a), FED.R.CRIM.P., effective December 1, 2009, Defendant shall have fourteen (14) days from the date of service of a copy of this order or after the oral order is stated on the record within which to file specific written objections with the District Court. Failure to timely file objections in accordance with Rule 59(a) may waive the right to review. 59(a), FED.R.CRIM.P.

IT IS FURTHER ORDERED that if a release to a third party is to be considered, it is counsel's responsibility to notify Pretrial Services sufficiently in advance of the hearing before the District Court to allow Pretrial Services an opportunity to interview and investigate the potential third party custodian.

DATE: October 28, 2013


Honorable Steven P. Logan
United States Magistrate Judge